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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,891	07/15/2003	Vincent De Laforcade	NONY 3.0-004	7321
530	7590	01/25/2007	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			DOAN, ROBYN KIEU	
		ART UNIT		PAPER NUMBER
				3732
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/25/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/619,891	DE LAFORCADE, VINCENT
	<b>Examiner</b>	<b>Art Unit</b>
	Robyn Doan	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 December 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 58,61-83,85-87 and 97-103 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 58,61-83,85-87 and 97-103 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)             |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application   |
|  | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 86, 87 and 97 are rejected under 35 U.S.C. 102(b) as being anticipated by Schultz et al.

With regard to claim 86, Schultz discloses an applicator (41 see fig. 3) having an applicator holder (27) with fixing means (internal surface 67), the applicator having an assembly skirt (29) having a free end (at 51) and an annular bead (49) displaced from the free end and on an inside surface of the assembly skirt, wherein the fixing means being situated between the free end and the annular bead (see fig. 3). In regard to claim 87, the device further comprises a screw means (threaded portion) for screw fastening the applicator on the neck (25) of the receptacle (13). In regard to claim 97, the annular bead being a sealing bead (col. 2, lines 42-46).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 58, 62, 63, 76-83, 85, 98, 99, 101-103 are rejected under 35 U.S.C.

103(a) as being unpatentable over Hulsh (U.S. Pat. # 3,121,906) in view of Ogino et al.

With regard to claim 58, Hulsch discloses a kit (fig. 4) comprising a receptacle (11) having a body (10), a neck (12) having an opening (17) into the body, the neck having a first portion (15) having a first inside diameter (see fig. 2) and a first fixing means (16), a second portion (at 12) locating between the body and the first portion having a second inside diameter (fig. 3) and a second thread (13), wherein the second diameter being greater than the first diameter, at least one accessory (30) configured for removably fixing onto the neck of the receptacle, wherein the neck including a shoulder (14) connecting the first portion to the second portion and the accessory having an assembly skirt (34) that cooperates with the second portion, the assembly skirt having a sealing surface (see attachment A) that abuts the shoulder when the accessory is fixed to the neck. Hulsch fails to show the body containing a cosmetic, however, Ogino et al discloses a similar type of receptacle as Hulsch, the receptacle of Ogino et al can contain cosmetic (col. 1, lines 5-8). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cosmetic as taught by Ogino et al into the Hulsch receptacle for the purpose enhancing beauty to the user. In regard to claim 62, the accessory does not include a sealing lip that abuts an inside of the neck of the receptacle. In regard to claim 63, Hulsch shows the accessory having an applicator (38). In regard to claim 76, Hulsch in view of Ogino et al show the applicator being made by molding (Ogino, col. col. 7, lines 62-67). In regard to claim 77,

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Hulsch shows one of the fixing means includes a thread (15, 23), said kit having at least one accessory adapted for screwing onto the thread. In regard to claim 78, Hulsch in view of Ogino fail to show at least one of the fixing means having at least one snap-fastening member and the kit having at least one accessory complementing with the snap-fastening member. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct one of the fixing means having at least one snap-fastening member, since such modification is well known in the art. In regard to claims 79-83, Hulsch discloses at least two accessories (20, 30), a first one including a cap (20) and a second one including an applicator (30) and wherein the two accessories each incorporating with the first and second portions of the neck. In regard to claim 98, Hulsch shows the shoulder (14) having a plane annular surface (see fig. 4) extending outside the neck, the shoulder being perpendicular to the neck. In regard to claim 99, Hulsch shows both of the fixing means includes threads (see fig. 4). In regard to claim 101, Hulsch in view of Ogino show the receptacle having plastic material (Ogino). In regard to claim 102, Hulsch shows the accessory being configured for removably fixing onto the neck of the receptacle by fastening only on the fixing means (see fig. 4). In regard to claim 103, Hulsch in view of Ogino fail to show the threads enable screw fastening by turning in a same direction, however, it would have been an obvious matter of design choice to construct the threads enable screw fastening by turning in a same direction, since such modification would involve a mere change in the design of the known component.

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al as applied to claim 58 above, and further in view of Schultz.

With regard to claim 61, Hulsch in view of Ogino et al discloses a kit comprising all the claimed limitations in claim 58 as discussed above except for the sealing surface having an annular bead. Schultz discloses a container as discussed above having an applicator (41 see fig. 3) having an applicator holder (27) with fixing means (internal surface 67), the applicator having an assembly skirt (29) having a free end (at 51) and an annular bead (49) displaced from the free end and on an inside surface of the assembly skirt. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the annular bead as taught by Schultz into the kit of Hulsch in view of Ogino et al in order to seal the surface between the neck of the receptacle and the applicator.

Claims 64-68, 70-72, 74 and 75 rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino et al as applied to claim 58 above, and further in view of Elmer et al (U.S. Pat. # 6,457,476).

With regard to claims 64-68, Hulsch in view of Ogino et al discloses a kit comprising all the claimed limitations in claims 58, as discussed above except for the applicator including teeth and at least one of the teeth having at least one dispenser orifice being displaced from the free end of the one of said teeth, at least one dispenser orifice substantially limits a cosmetic to be dispensed from dispensing other than between the teeth. As to claims 70-72 and 74-75, Hulsch in view of Ogino et al also fail

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to show at least one row of teeth having a pair of end teeth having orifices which faces others of the at least one row of teeth, at least one tooth located between the pair of end teeth having a plurality of orifices on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth and the applicator having at least six teeth, each including an orifice. Elmer et al discloses an applicator (20, figs. 2, 7) comprising one row of at least six teeth (fig. 2) being the same length, each tooth includes at least one orifice (62) being displaced from the free end of the tooth; Elmer et al also shows a pair of end teeth (fig. 2) having orifices (62, 68) which faces others of the at least one row of teeth (fig. 7), at least one tooth (50) located between the pair of end teeth having a plurality of orifices (62, 68, fig. 7) on the exterior of the one tooth, the plurality of orifices being located on opposite sides of the one tooth (fig. 7). Elmer et al inherently shows at least one dispenser orifice (62, 68) substantially limits a cosmetic to be dispensed from dispensing other than between the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Elmer et al as discussed above into the applicator of Hulsch in view of Ogino et al in order to effectively deliver the liquid to the hair of the user.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hulsch in view of Ogino in view of Kirschenbaum (U. S. Pat. # 2,270,529).

With regard to claims 65 and 73, Hulsch in view of Ogino discloses a kit comprising all the claimed limitations in claims 58, as discussed above except for at

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least one tooth having a groove extending from a free end of the tooth to the at least one orifice. Kirschenbaum discloses a comb applicator (fig. 3) comprising at least one tooth (76) having at least one dispenser orifice (79) being displaced from the free end of the one of said teeth and at least one tooth having a groove (80) extending from a free end (78) of the tooth to the at least one orifice. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular structures of the teeth as taught by Kirschenbaum as discussed above into the applicator of Hulsch in view of Ogino in order to retard to rapid flow of the liquid down to the teeth.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan  
Examiner  
Art Unit 3732

*Attachment A*

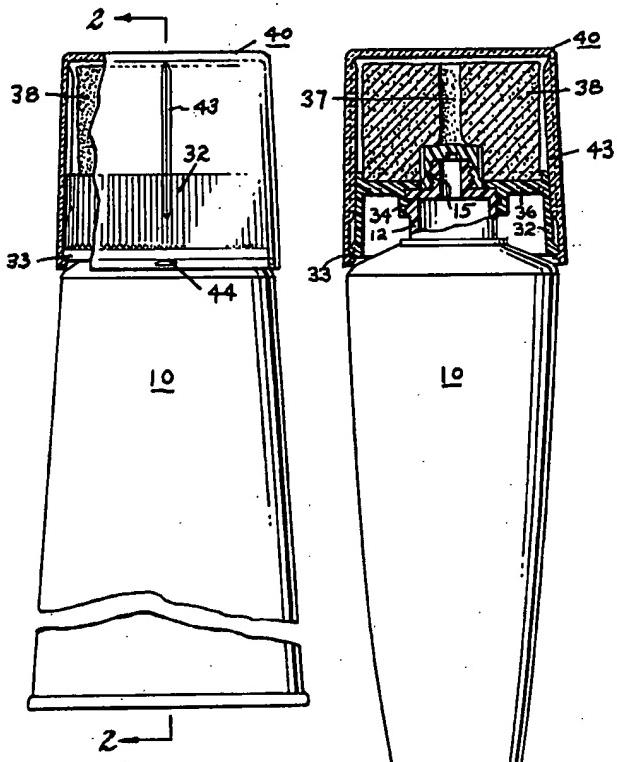
Feb. 25, 1964

S. D. HULSH

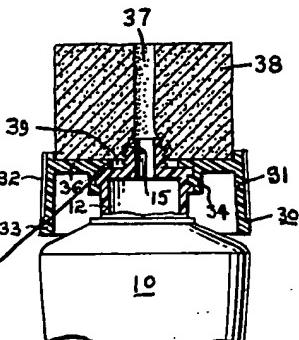
3,121,906

SQUEEZABLE TUBE DISPENSER

Filed May 29, 1962

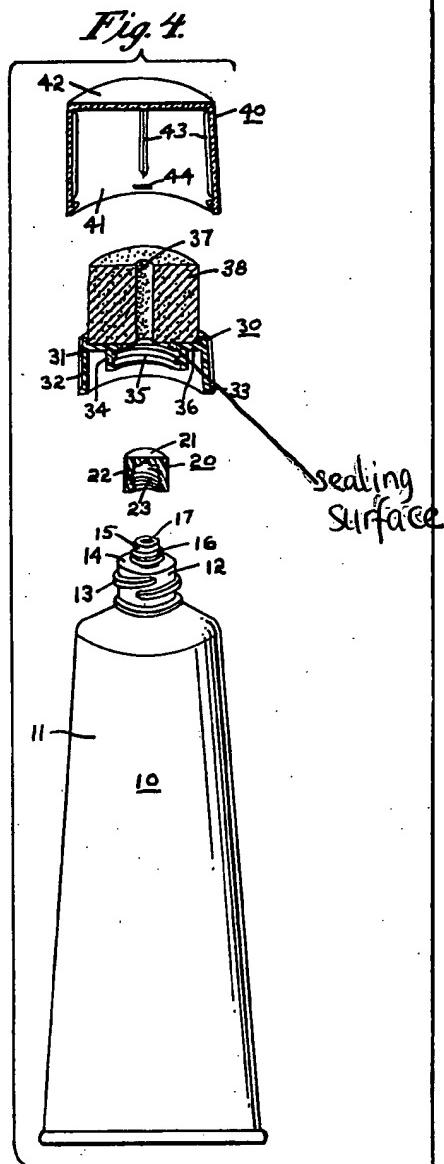


*Fig. 1.*



*Sealing surface*

*Fig. 3.*



INVENTOR

SHELDON DAVID HULSH

BY

*Leon Edelman*

ATTORNEY.